

INITIAL STATEMENT OF REASONS

This action amends provisions within the California Department of Corrections and Rehabilitation (CDCR) governing inmate grooming standards and inmate religious programs. The California Code of Regulations, Sections 3000, 3062, 3075 and 3210 are being amended to allow male and female inmates to maintain their hair at any length, not to extend over the eyebrow or cover the inmate's face, to define religious review committee, and to allow inmates a reasonable accommodation to attend a scheduled religious service if they are unable to do so due to conflicts. This regulation will apply equally to male and female inmates, and will be monitored to assure that the length of the inmate's hair does not alter the inmates' appearance or pose a health and safety risk.

As a result of numerous lawsuits regarding the religious rights of inmates, i.e. *Warsoldier v. Woodford*, Case No.: 04-55879, DC No. CV-04-02233-RSWL, (July 2005); *Mayweathers v. Newland*, 314 F.3d 1062, 1070 (9th Cir. 2002); and *In re Corey Williams*, Case No.: SC133840A, (February 2004). The Department has been ordered to comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA) which provides that the government may not impose a substantial burden on an inmate's exercise of religion unless the regulation in question furthers a compelling state interest in the least restrictive manner. The Department has determined that amending the Department's grooming standards would serve a compelling governmental interest by establishing a less restrictive alternative to the current grooming standards. Furthermore, the Department has determined that it would also serve a compelling governmental interest by applying the grooming standards equally to all inmates, irregardless of their religion, race, ethnic background, or sex.

This "across the board" amendment of the grooming standards is further necessitated by the fact the Department would be required to evaluate each individual inmate's request for exemption due to RLUIPA. The Department would be unable to meet the staffing demands required to adequately review requests from inmates to determine if a specific inmate produces prima facie evidence to support a claim alleging a violation of the inmate's exercise of religion specific to grooming standards. Additionally, the Department is not a religious expert and would be unable to determine specific requirements of a particular religion.

The amendment allows an inmate to attend a scheduled religious service by affording inmates a reasonable accommodation, which include, but are not limited to modifying the work schedule, or use of accrued time or allowable break, granting of a job/assignment change, changes of regular days off, etc. When the request for a religious service requires a specific time, location and/or items not otherwise authorized, the request will be referred to a Religious Review Committee for review and consideration. Safety and security of the operations of the institution will be considered when determining whether to grant the accommodation. Use of reasonable accommodation shall in no way adversely impact an inmate's credit earning status.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affective private persons that the action proposed.

Section 3000 is amended to include the definition of a Religious Review Committee. This committee is formed and maintained at each institution and reviews and reaches a decision regarding requests for

reasonable accommodation and/or access to religious services. This is committee is necessary to fairly considered requests from inmates regarding religious services.

Subsection 3062(a) is unchanged.

Subsection 3062(b) is amended to specify that the face as well as the scalp shall have no lettering, numbering, or designed of any kind. This is necessary due to the changes in these regulations that now permit inmates to have facial hair, i.e. short beards, sideburns, and mustaches. Lettering, numbering, and/or designs are not allowed on an inmate's hair, scalp or face at any time.

Subsection 3062(c) is unchanged.

Subsection 3062(d) is amended due to the reorganization of the CDCR. The Division of Adult Institutions, Associate Directors are positions in the new CDCR that oversees the administration of the institutions within a region. The change is necessary due to the new re-organizational structure within the CDCR.

Existing subsection 3062(e) is deleted.

Existing subsection 3062(f) is renumbered to 3062(e) and amended to allow inmates to maintain their hair at any length, but it shall not extend over the eyebrows or cover the inmates' face or pose a health and safety risk. This text is a direct result of lawsuits, (*Warsoldier v. Woodford*, *Mayweathers v. Newland*, and *In re Corey Williams*) regarding the religious rights of inmates. The Department has been ordered to comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA) which provides that the government may not impose a substantial burden on an inmate's exercise of religion unless the regulation in question furthers a compelling state interest in the least restrictive manner. If hair is long, it shall be worn in a neat, plain style, which does not draw undue attention to the inmate. This is necessary to aid custody staff while inspecting and searching inmates for contraband.

Existing subsection 3062(g) is renumbered to 3062(f) and amended to allow inmates to possess and use approved hair holding devices based on Section 3190. The possession of personal property is a privilege and is subject to conditions and restrictions established in the Title 15. Allowable inmate property department-wide is based upon assigned Privilege Group and/or assigned security level, and/or institution mission, and gender considerations. This regulation is necessary to allow inmates, who want to maintain their hair at a length of three inches or more, to possess and use approved specific hair holding devices.

New subsection 3062(g) is adopted to assure that inmates shall be required to have their hair searched by custody staff to ensure it is free of contraband. Subsection (e) above requires that an inmate, gather, pull back and band their hair if it is longer than three inches. Inmates will be required to unbraid and undo hairstyles such as braids and cornrows; inmates will be required to take down their ponytails; and lastly, custody staff will be required to search inmates who wear dreadlocks to the best of their ability to ensure the hair is free of contraband. Hair searching procedures may include, but are not limited to, a visual inspection, an inmate running their fingers or a comb/brush through their own hair, and/or custody staff utilizing a hand-held metal detector to search the inmate's hair. This regulation is necessary to ensure the safety and security of the institutions.

Existing subsection 3062(h) is deleted.

Existing subsection 3062(h)(1) is renumbered to 3062(h) and is amended to permit male inmates to have short beards that shall not extend more than one-half inch in length outward from the face. Existing language allowed mustaches and sideburns, but was restricted by not being allowed below the top of the upper lip nor extending beyond the corner of the mouth. These specific restrictions are deleted; however, all facial hair shall not extend more than one-half inch in length outward from the face. The one-half inch was determined to balance the interests of security with the mandates of RLUIPA. The one-half inch will

allow custody staff to thoroughly search for contraband. Additionally, the one-half inch length is to prevent the substantial alteration of the inmate's appearance, which could aid to their escape.

Existing subsection 3062(h)(2) is deleted.

Subsection 3062(i) is amended to further ensure the personal safety of inmates who work around machinery, or in high fire hazard areas, and for sanitary reasons for those inmates assigned to work in food preparation, processing or serving areas. This regulation specifies that hair nets, safety head coverings, etc. shall be worn by inmates as deemed necessary by staff. This is necessary to ensure the further safety of the inmate as well as to ensure the cleanliness and non-contamination of the food served to inmates.

Subsection 3062(j) is unchanged.

Subsection 3062(k) is amended to specify that inmates shall not possess or wear any type of jewelry or other object intended to be worn as a body piercing adornment. This is necessary as it may pose a threat to the health and well being of inmates in that instruments or devices used for piercing may not be sterile, and could cause infections, as well as transmitting blood-borne diseases. Additionally, these provisions are necessary because body piercings may be ripped out during an altercation, and they would also would pose an additional safety and security risk as piercings can be altered to make weapons.

Subsections 3062(l) through 3062(m) are unchanged.

Subsections 3075(a) through 3075(b) are unchanged.

Subsection 3075(c) is amended to inform inmates that if they noticeably change their appearance within a five year period, they will be charged for the cost of updating their identification photo/card. Current photos of each inmate is necessary to assure that staff can easily identify inmates for safety and security reasons. Each inmate carries their identification with them at all times for access into their work, classrooms, law library, for canteen purchases, etc.

Subsection 3075(d) is unchanged.

Subsection 3210(a) initial sentence is amended to afford inmates a reasonable accommodation, including, but not limited to, modifying the work schedule, or use of accrued time or allowable break, grant a job/assignment change, changes of regular days off, etc. This is necessary to comply with the RLUIPA which provides that the government may not impose a substantial burden on an inmate's exercise of religion unless the regulation in question furthers a compelling state interest in the least restrictive manner. Additionally, the use of reasonable accommodation shall in no way adversely impact an inmate's credit earning status.

Existing secondary sentence of subsection 3210(a) is renumbered to new subsection (b) and the text is unchanged.

Existing subsection 3210(b) is renumbered to new subsection 3210(c) and amended to add "accommodation" to the text as reasonable time and accommodation will be allowed for religious services. Also the word "institutional" is added to clarify that the accommodation for the religious services are in keeping with and specific to institutional operations and activities.

Subsection 3210(d) is adopted to make specific that a request for religious service accommodation requires a specific time, location and/or item(s) not otherwise authorized, be referred to a Religious Review Committee (RRC). The RRC shall be comprised of designated chaplains, a correctional captain or their designee and will review and consider requests for religious service accommodation. The RRC shall not grant accommodations if it would impact facility/unit safety and security, and the orderly day-to-day operations of the institution.